Supreme Court, U.S.
FILED
SEP 26 1994
OFFICE OF THE CLERK

No. 94-366

IN THE

Supreme Court of the United States

October Term, 1994

IN THE MATTER OF UNR INDUSTRIES, INC., UNARCO INDUSTRIES, INC., UNR., INC., UNR-ROHN, INC. (ALABAMA), UNR-ROHN, INC. (INDIANA), JOBAL TUBE CO., INC., AND FOLDING CARRIER CORP.,

DEBTORS-IN-POSSESSION.

UNARCO BLOOMINGTON FACTORY WORKERS,

PETITIONERS,

V.

UNR INDUSTRIES, INC., ET AL.,

DEBTORS-RESPONDENTS,

AND

TRUSTEES OF THE UNR ASBESTOS DISEASE CLAIMS TRUST,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS THE TRUSTEES OF THE UNR ASBESTOS-DISEASE CLAIMS TRUST

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QUESTIONS PRESENTED

1. Whether, in spite of uniform authority to the contrary in the eight Circuit Courts of Appeals that have considered the issue, "separation of powers" forbids a determination that a confirmed plan of bankruptcy reorganization has been so substantially consummated that petitioners' challenges to the plan should not be considered.

2. Whether petitioners, who are not future claimants, have standing to contest the bankruptcy court order enjoining future claimants from suing the reorganized entity.

3. Whether the court of appeals correctly concluded that the treatment of future asbestos-disease claims under the reorganization plan confirmed by the bankruptcy court accorded with both the constitutional "case or controversy" requirement and the Bankruptcy Code definition of claims.

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STATEMENT OF THE CASE

This case concerns the disposition of appeals from bankruptcy court orders, entered in 1989 and 1990, confirming and implementing the plan of reorganization for UNR Industries, Inc. and its subsidiaries and affiliates (collectively "UNR").

In July 1982, UNR had filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code due, in large part, to the costs of defending some 17,000 asbestos-related tort and wrongful death suits then pending against UNR. (I-2). Although UNR's involvement in the manufacture and sale of asbestos had ceased in the early 1970s, because of the long latency period from exposure to manifestation of asbestos-related disease, another 30,000 to 120,000 such suits were predicted. *Id.* The assets of UNR would have been consumed by litigation of even a fraction of these asbestos-disease claims. Appendix I, Item 1.

The various committees of existing creditors of UNR and a Legal Representative appointed by the court to represent future asbestos-disease claimants negotiated a reorganization plan with UNR. All classes of creditors, including asbestos-disease claimants, voted overwhelmingly in favor of the plan. (K-5).

After notice to creditors and other parties in interest, the bankruptcy court conducted an evidentiary hearing as to whether the plan should be confirmed. (J-1). Based upon the evidence presented, the bankruptcy court determined, among other things, that each holder of a claim would receive under the Plan value that was "not less than the amount that such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Code." (J-2).

The plan of reorganization included the following elements relevant to the petition:

1. The UNR Asbestos-Disease Claims Trust was established, funded by 63 percent of UNR's stock, for the benefit of holders of Asbestos Disease Claims, including those persons who had not yet manifested asbestos disease ("future claimants");[1]

2. A permanent injunction was entered June 1, 1989 against suits by asbestos-disease claimants against the Debtors or the reorganized UNR.

The injunction order was entered only after extensive efforts to provide notice through national media, followed by mailed notices to notify persons who might have asbestos-disease claims. (K-1 to K-2). After a hearing, the bankruptcy court determined that these efforts "constitute[d] the best notice possible under the circumstances of this case to those who might be affected by the Injunction and effectively afforded an opportunity to object and be heard to those who might be affected by the Injunction." (K-2). The bankruptcy court further found that, without the injunction, UNR would be unable to successfully reorganize, and that the

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1 Without reaching any determination whether future claimants had "claims" within the meaning of the Bankruptcy Code, the bankruptcy court approved a plan providing that future claimants would have the same rights against the Trust as existing claimants and enjoined future claimants as well as existing claimants from proceeding against the reorganized debtor. Any scheme which left future claimants free to sue the reorganized debtor would have doomed a reorganization to failure since the debtor did not have the resources to pay those claims.

Plan made adequate provision for all asbestos-disease claimants. (K-5).

Petitioners are a group of forty-eight former employees (or their representatives) of UNR's plant in Bloomington, Illinois, who have asserted asbestos disease claims against UNR both as employees entitled to workers' compensation (Class 2 claimants under the Plan), and as tort claimants (Class 5 claimants under the Plan).

Seven days after entry of the confirmation order and the injunction, petitioners filed notices of appeal to the district court from both orders.[2] Eighteen days later, petitioners filed a motion with the bankruptcy court for a stay of the orders pending appeal. In the interim, New UNR had begun implementing the Plan and the public began trading the stock and warrants of New UNR. The motion for a stay was denied.

In their appeal of the injunction order, the petitioners raised their present challenges to the bankruptcy court's subject matter jurisdiction as to future claimants. (G-5). The district court determined that petitioners could not assert the rights and interests of the future claimants:

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2 Petitioners also appealed the bankruptcy court's order approving the form of the UNR Asbestos-Disease Claims Trust (the "Trust"). The Trust agreement was subsequently modified and petitioners appealed from the order approving the modified Trust.

> [T]he Workers are affected pecuniarily only to the extent the future claimants are allowed to make claims against the money in the Trust. The Injunction Order, however, is not the vehicle by which that interest is affected. The Plan, as approved by the Confirmation Order, and the subsequent orders implementing the Trust provide the authority and procedures for future claimants to be paid out of the Trust. A finding, for whatever reason, that the bankruptcy court could not enjoin suits brought by Future Claimants would have no direct effect on whether or not the Workers would have to share Trust funds with the Future Claimants. The Workers' pecuniary injury is tied to that sharing arrangement, not to any prohibition against bringing suit.

(G-7).

The district court went on to dismiss most of the petitioners' appeal of the confirmation order as moot because it found that "the Plan has been implemented to such a degree that it would be impossible to grant relief . . . without effecting the kind of substantial and detrimental change that the mootness doctrine disallows," and "would undermine the economic foundation upon which numerous innocent third parties relied in purchasing stock and transacting business in New UNR." (G-23 to G-24). The district court concluded that certain other aspects of petitioners' appeals were not moot, including the contention that petitioners were entitled to Class 2 status, under which they would be paid in full under workmen's compensation, as well as Class 5 status, in which they would have a claim for partial payment against the Trust. Thus, if petitioners were determined to have only Class 2 claims they would be paid in full, and would have no cause to complain that UNR was reorganized, rather than liquidated, and would be indifferent to other provisions of the

reorganization plan. However, the district court determined that petitioners' classification appeal raised standing questions best resolved by the bankruptcy court. (G-24 to G-26). On remand, the bankruptcy court determined that petitioners held both Class 2 and Class 5 claims.

Upon UNR's renewal of its motion to dismiss petitioners' appeals, the district court held that the bankruptcy court's determination that petitioners held both Class 2 and Class 5 claims precluded petitioners' challenge to the Plan's classification of their claims, because petitioners received the benefits of both classes. Considering each of petitioners' six issues on appeal, the district court found that the implementation of the Trust had proceeded to a point that reversal of the Trust orders was impracticable. (F-6 to F-10). In particular, the district court determined that the revisions of Trust procedures proposed by petitioners were no longer possible in light of the irreversible decisions made by thousands of claimants to settle their claims under existing procedures: "[C]laimants made decisions about which liquidation option to elect based upon the approved claims procedures, and Trustees liquidated claims and paid out millions of dollars as calculated and required under the Trust Order."[3] (F-5).

Petitioners appealed this and the district court's prior holdings to the Seventh Circuit Court of Appeals. Appellees UNR and the Trustees supplemented the record to demonstrate the irreversible nature of the transactions taken

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3 Claimants who have been paid include claimants who were future claimants at the time of plan confirmation.

in reliance on the existing plan and Trust procedures, including:

- More than 47 million shares of common stock had been issued;
- Payments of more than $165 million in dividends had been made;
- The Trust had processed the claims of approximately 105,000 claimants who had opted for a flat fee settlement and had paid to them more than $35 million;
- The Trust had begun individualized resolution of other claims;
- The Trust had expended more than $9 million to establish and maintain its claims resolution facility;
- Settlements had been reached between UNR and its insurers for approximately $62 million;
- The Trust had elected a tax status and UNR received a $90 million tax benefit;
- Numerous UNR subsidiaries had been dissolved, merged or sold;
- More than 81,000 claimants had released their claims.

Appendix I, Items 2, 3 and 4.

The court of appeals held that, although these and other actions taken in reliance on the confirmed plan did not render it impossible as a theoretical matter to provide some relief on petitioners' appeals, they did make it impossible to do so without substantial prejudice to persons who had relied on the confirmed and substantially consummated plan of

reorganization. (C-3 to C-4). In light of these facts, the court concluded that it would be inequitable and imprudent to undertake the wholesale revisions required, assuming, arguendo, that there were any merit whatsoever to petitioners' substantive contentions. (C-5 to C-8).[4]

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4 Petitioners filed a petition for rehearing and suggestion for rehearing en banc, substantially on the grounds now asserted in their petition for certiorari. The petition for rehearing was denied by Opinion decided May 27, 1994, no active judge having requested a vote on the suggestion of rehearing en banc, and all of the judges on the panel having voted to deny rehearing. (A-1).

REASONS FOR DENYING THE WRIT

I. THE DENIAL OF PETITIONERS' APPEALS BY THE COURT OF APPEALS PRESENTS NO SEPARATION OF POWERS ISSUES.

A. The Court of Appeals Followed Well-Established Prudential And Equitable Principles.

Every Court of Appeals to have considered the issue has concluded that substantial consummation of a plan of reorganization bars challenges to reorganization-related appeals. *In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994) (citing *In re Chateaugay Corp.*, 10 F.3d 944, 952-54 (2d Cir. 1993)); *In re Specialty Equipment Cos.*, 3 F.3d 1043, 1047-49 (7th Cir. 1993); *In re Andreuccetti*, 975 F.2d 413, 418 (7th Cir. 1992); *In re Roberts Farms, Inc.*, 652 F.2d 793, 797 (9th Cir. 1981); *Miami Ctr. Ltd. Partnership v. Bank of New York*, 838 F.2d 1547, 1554-55 (11th Cir.), *cert. denied*, 488 U.S. 823 (1988); *In re AOV Indus., Inc.*, 792 F.2d 1140, 1147-50 (D.C. Cir. 1986)). *See also Rochman v. Northeast Util. Serv. Group*, 963 F.2d 469, 471-72 (1st Cir.) (noting that mootness doctrine facilitates the "important public policy favoring orderly reorganization and settlement of debtor estates by 'affording finality to the judgments of the bankruptcy court'") (quoting *In re AOV Indus.*, 792 F.2d at 1147), *cert. denied*, 113 S. Ct. 304 (1992); *First Union Real Estate & Mortgage Inv. v. Club Assoc.*, 956 F.2d 1065, 1070 (11th Cir. 1992) (affirming dismissal of bankruptcy appeal as moot because "a number of investors, who were not parties to th[e] case, had committed new funds to the [reorganization plan] with the expectation of receiving a preferred return on their investments"); *In re Block Shim Dev. Company-Irving*,

939 F.2d 289, 291 (5th Cir. 1991) (holding that reversal of reorganization plan was not possible because payments had already been disbursed to third parties and every transfer contemplated by plan was completed); *Central States' Southeast & Southwest Areas Pension Fund v. Central Transp., Inc.*, 841 F.2d 92, 96 (4th Cir. 1988) (affirming the dismissal of a bankruptcy appeal as moot because the relief sought "would require the undoing of financial transactions involving third parties, not participants in this litigation").

In the opinion below, the Seventh Circuit suggested that the familiar doctrine would more precisely be described by other terminology. All of the circuits that have addressed the issue, however, including the court below, have agreed that the inquiry involves prudential and equitable concerns rather than the Article III question of whether the controversy is live. *E.g.*, *Manges v. Seattle-First Nat. Bank*, No. 93-7328, 1994 WL 421596, at *3 (5th Cir. Aug. 29, 1994) ("Many courts . . . have employed the concept of 'mootness' to address equitable concerns unique to bankruptcy proceedings. In this context, 'mootness' is not an Article III inquiry as to whether a live controversy is presented; rather, it is a recognition by the appellate court that there is a point beyond which they cannot order fundamental changes in reorganization actions.").

Petitioners mistakenly analogize the Seventh Circuit's prudential decision that UNR's confirmed and implemented plan of reorganization ought not be undone to the doctrine of abstention. Abstention has nothing to do with this case.

As the cases cited by petitioners make clear, the abstention doctrine is exclusively concerned with implementing federalism; the doctrine does not presume that the plaintiffs are not entitled to federal relief, it simply refers them to a state forum. *See, e.g.*, *Colorado River Water*

Conservation Dist. v. United States, 424 U.S. 800, 814-16 (1976) ("Our decisions have confined the circumstances appropriate for abstention to three general categories[:] . . . cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law[;] . . . where there have been presented difficult questions of state law bearing on policy problems . . . whose importance transcends the result of the case then at bar [; and] where . . . federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, state nuisance proceedings . . . , or collection of state taxes.") (citations omitted); *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 415 (1964) ("Abstention is a judge-fashioned vehicle for according appropriate deference to the 'respective competence of the state and federal court systems.'") (quoting *Louisiana Power & Light Co. v. Thibidaux*, 360 U.S. 25, 29 (1959)). These concepts played no part in the decision below.

Bankruptcy proceedings are an exclusively federal proceeding in which the rules and principles of equity are central. *Pepper v. Litton*, 308 U.S. 295, 304 (1939). It is these rules and principles of equity, and not federalism concerns, which appellate courts invoke in declining to hear appeals from bankruptcy court orders where doing so would upset implemented plans of reorganization. *See First Union Real Estate & Mortgage Inv. v. Club Assoc.*, 956 F.2d 1065, 1069 (11th Cir. 1992) ("[t]he test for mootness reflects a court's concern for striking the proper balance between the equitable considerations of finality and good faith reliance on a judgment and the competing interests that underlie the right of a party to seek review of a bankruptcy court order adversely affecting him") (citations omitted); *In re AOV Indus.*, 792 F.2d at 1147 ("[e]ven when the moving party is not entitled to dismissal on article III grounds, common sense

or equitable considerations may justify a decision not to decide a case on the merits") (citations omitted).

Indeed, the reasoning of these cases reflects application of traditional equitable principles. *See In re Envirodyne Indus., Inc.*, 29 F.3d 301 (7th Cir. 1994) (stating that an equitable mootness doctrine "is perhaps best described as merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties") (citing *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 375 (1977)).

Even the academic critics of the Supreme Court's abstention decisions, upon whom petitioners rely, agree that traditional equitable doctrines counseling against granting certain relief present no separation of powers questions. *See* Redish, Martin H., *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 Yale L. J. 71, 91 (1984) ("many [of the harms prevented by the abstention doctrines] could be avoided more simply by resort to such devices as . . . traditional equitable principles"); Shapiro, David L., *Jurisdiction and Discretion*, 60 N.Y.U.L. Rev. 543, 545 (1985).

Petitioners suggest that, by failing to decide the appeal from a bankruptcy order on the merits, the court of appeals violated the jurisdictional statute. Pet. at 14. This is nonsense. Under petitioners' mistaken view, every application of a prudential doctrine by an appellate court to decline to decide an appeal on the merits would violate jurisdictional commands. The statute granting jurisdiction to district courts over appeals from final orders of bankruptcy courts, 28 U.S.C. § 158(a), contains nearly identical language as does the statute conferring jurisdiction to courts of appeal over appeals from final orders of the district courts, 28

U.S.C. § 1291. Petitioners' position would bar courts of appeal from ever declining to hear an appeal on prudential or equitable grounds, and would require overruling of decades of legal precedent in this and other courts. *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 99-100 & n.6 (1979) (stating that even where a plaintiff satisfies Article III requirement of case or controversy court may decline to decide case under prudential standing doctrines); *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967) (stating that under ripeness doctrine, courts will decline to consider case where administrative action is insufficiently complete); *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring) (summarizing rules developed by Supreme Court to avoid decision of constitutional questions "confessedly within its jurisdiction"); *Building & Constr. Dep't v. Rockwell Int'l Corp.*, 7 F.3d 1487, 1491-92 (10th Cir. 1993) (summarizing applications of prudential mootness doctrine to requests for prospective equitable relief).

B. The Court of Appeals' Fact-Intensive Determination Is An Inappropriate Subject For The Writ.

The Seventh Circuit, in common with other courts of appeals, applies a fact-specific inquiry into whether relief can be granted without unduly affecting the overall reorganization. *In re Andreuccetti*, 975 F.2d 413, 418 (7th Cir. 1992). *See also First Union*, 956 F.2d at 1069 n.11; *In re AOV Indus.*, 792 F.2d at 1148. This focus on the particular facts means that any review of the holding by the court of appeals would be of interest only to the parties.

The record clearly supports the conclusion of the court of appeals that the extensive implementation of UNR's reorganization plan made reversing the reorganization order impractical and unfair:

> Since the plan went into effect, more than 15 million shares of New UNR have been distributed to its creditors and pre-petition shareholders and are trading on public exchanges. Warrants for additional stock have been issued and are trading. . . . Corporate acquisitions and divestitures (not to mention ordinary commercial transactions) have occurred; tax consequences (including a $90 million income tax benefit) have been realized; large insurance settlements have been disbursed; lawsuits have been dismissed.

In re UNR Industries, Inc., 20 F.3d 766, 769 (7th Cir. 1994). The Court recognized that granting petitioner's request to "undo[] the identification of persons entitled to make claims on the assets in the Trust" would have "ramifications for the rest of the plan" that would be extraordinary disruptive. The potential ramifications would include reallocating stock to other UNR creditors, reallocating insurance proceeds, and suddenly revaluing the 15 million shares of New UNR stock "which current holders purchased on the assumption that all asbestos payments would be borne by the Trust." *In re UNR Industries, Inc.*, 20 F.3d at 769. Under these factual circumstances, the court of appeals' conclusion that it would be imprudent and inequitable to reconsider the elements of the plan of reorganization is clearly correct.

II. PETITIONERS LACK STANDING TO CHALLENGE THE INJUNCTION ON BEHALF OF THE FUTURE CLAIMANTS WHOSE INTERESTS THEY OPPOSE.

At the core of petitioners' challenge to the plan of reorganization is a contention that the bankruptcy court improperly enjoined future asbestos claimants from pursuing claims against UNR. Since none of the petitioners is a future claimant, the district court concluded that petitioners lacked standing to challenge the bankruptcy court's injunction order as to future claimants.[5] Petitioners' manifest lack of standing to complain of the injunction addressed to future claimants provides a further reason to decline the review.

The district court's conclusion that petitioners lack standing to challenge the injunction as to future claimants accords with well-established principles of standing. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties"); *Singleton v. Wulff*, 428 U.S. 106, 114 (1976) ("Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party") (quoting *Barrows v. Jackson*, 346 U.S. 249, 255 (1953)). *See also Kane v. Johns-Manville Corp.*, 843 F.2d 636, 641-46 (2d

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5 Because of its conclusion that the plan had been so substantially consummated as to preclude the relief sought by petitioners, the court of appeals found it unnecessary to address this issue.

Cir. 1988) (discussing heightened prudential standing requirements applied in bankruptcy context).

As set forth in the district court's analysis, petitioners seek to exclude future claimants from the Trust, thereby ensuring petitioners a greater pro rata share of the value of the UNR stock owned by the Trust. G-7. The irony of this is that the effect of the exclusion of future claimants could be to destroy the value of the Trust's UNR stock in which petitioners seek to share. Absent the injunction, future claimants would be free to sue UNR, thereby transforming UNR once again into an insolvent asbestos company and destroying the value of the stock owned by the Trust.[6]

Petitioners' suggestion that they would benefit from reversal of the injunction because reorganization would be rendered impossible, thereby forcing a Chapter 7 liquidation in which they would fare better because only existing creditors would receive distributions is without sound support. Pet. at 16-17. The bankruptcy court's assessment in June 1989 is irrelevant -- UNR is today a different corporation than it was then, with a whole new set of creditors, and there are thousands more asbestos-disease claimants. Petitioners' speculation, unsupported by anything in the record, that they might come out better if UNR were liquidated today cannot support standing. *See Allen v.*

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6 Unlike the challenged orders in the cases cited by petitioner (Pet. at 17.), a determination that certain or all future claimants were not subject to the injunction would not provide any direct benefit to petitioners. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 805-06 (1985).

Wright, 468 U.S. 737, 757-59 (1984); *City of Los Angeles v. Lyons*, 461 U.S. 95, 109-10 (1983).

Moreover, as the Second Circuit stated in rejecting a similarly attenuated claim for standing by an asbestos claimant challenging a similar reorganization provision for future claimants in the Manville bankruptcy, "[t]hird-party standing is of special concern in the bankruptcy context where, as here, one constituency before the court seeks to disturb a plan of reorganization based on the rights of third parties who apparently favor the plan." *Kane v. Johns-Manville Corp.*, 843 F.2d at 644. Here, not one of tens of thousands of future claimants who have asserted claims for the first time after confirmation of the plan of reorganization has initiated any challenge to the Plan or injunction.

III. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT PETITIONERS' CHALLENGES TO THE TREATMENT OF FUTURE CLAIMS UNDER THIS PARTICULAR REORGANIZATION PLAN LACKED MERIT.

Because of the mootness holding by the district court and the court of appeals' disposition of the appeal on prudential and equitable grounds, neither court fully considered petitioners' arguments on the merits--reason enough for this Court to decline to do so. *E.g.*, *Hormel v. Helvering*, 312 U.S. 552, 556 (1941). Even a brief review of petitioners' arguments demonstrates that they rest on fundamental factual flaws and a misapplication of applicable bankruptcy law. Essentially, petitioners are complaining: (1) that the inclusion of future claimants as Asbestos Disease Claimants diluted their pro-rata share of the assets accorded to Class 5 claimants; (2) that the Plan's provisions for future claimants violated the case or controversy requirement of Article III of the Constitution because, by definition, future claimants were not before the bankruptcy court when the orders were entered; and (3) that the Plan's provisions for future claimants treated "estimates of future tort injuries" as claims under Section 101(5) of the Bankruptcy Code, a result claimed to be at odds with holdings in other courts of appeals.

Petitioners' contention that they have been injured by the Plan's provisions for future claimants rests on a false factual premise. The bankruptcy court's factual findings included a determination that the alternative to the Plan's provisions for future claimants was Chapter 7 liquidation, and that each holder of an asbestos-disease claim was better off under reorganization. Petitioners' bare assertion that they would be better off in a liquidation scenario because UNR's assets would have been divided among existing creditors only is

unsupported by any facts in the record. The bankruptcy court found that litigation of even a fraction of the then-pending claims by asbestos-disease victims would have consumed all of the assets of UNR.

Petitioners argue at length that the bankruptcy court lacked Article III jurisdiction to confirm the Plan with its provisions for the future claimants because no case or controversy was presented. Petitioners' argument completely overlooks that this was a bankruptcy proceeding, in which the bankruptcy court exercises *in rem* jurisdiction over the disposition of the debtors' assets. *See Continental Illinois Nat'l Bank & Trust Co. v. Chicago, Rock Island & Pac. Ry.*, 294 U.S. 648, 675-77 (1935); *see also United States v. Whiting Pools, Inc.*, 462 U.S. 198, 206 n.13 (1983) (noting that the *in rem* jurisdiction of the bankruptcy court has been expanded under the Bankruptcy Code).

Petitioners' argument, which the court of appeals understandably found mysterious, mistakenly treats the determination of the bankruptcy court to confirm the plan as an adjudication of some entirely speculative, future dispute. This is clearly wrong. As the court of appeals stated, "Injuries attributable to past acts are certain to occur; although the identity of the victims remains to be ascertained, the existence of the injury is real enough." 20 F.3d at 770. The cases upon which petitioners rely, *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), and *Whitmore v. Arkansas*, 495 U.S. 149 (1990), address the quite different issue of whether an individual with only a speculative future risk of injury can enjoin future conduct or assert rights of others in litigation.

In a final effort to generate an issue worthy of the writ, petitioners incorrectly assert that the court of appeals' "holding" that the asbestos-disease claims of future claimants are claims as defined in the Bankruptcy Code conflicts with holdings in other circuits. Pet. at 24-25. In fact, the cases

uniformly hold that where an asbestos claim is premised on prepetition contact with or exposure to products of the bankrupt, the claim falls within the Bankruptcy Code definition.

The purportedly conflicting holdings regarding treatment of future claims under the Bankruptcy Code reflect distinguishing factual differences in the cases under consideration rather than conflicting interpretations of the Bankruptcy Code's definition of "claim." Each of the Bankruptcy Code decisions cited by petitioners emphasizes the particular facts concerning the claims asserted in determining whether they constituted "claims" for bankruptcy purposes.[7] *E.g.*, *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1277-78 (5th Cir. 1994) (determining that on the specific facts before it, in which there was an absence of contact, exposure, impact, or privity between the debtor's prepetition conduct and the claimant, claim was not discharged in bankruptcy).

The courts which have addressed the status of bankruptcy claims of asbestos-disease claimants are in accord. *In re Johns-Manville Corp.*, 57 B.R. 680 (Bankr. S.D.N.Y. 1986); *Waterman S.S. Corp. v. Aguiar*, 141 B.R. 552, 556 (Bankr. S.D.N.Y. 1992), *vacated on other grounds*, 157 B.R. 220 (S.D.N.Y. 1993) (determining that a "claim" arose at the moment the plaintiffs came into contact with

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7 Two of the cases upon which petitioners premise their assertion of an inter-circuit conflict were decided not under the Bankruptcy Code, but under the former Bankruptcy Act. *Schweitzer v. Consolidated Rail Corp.*, 758 F.2d 936 (3d Cir.), *cert. denied*, 474 U.S. 864 (1985); *In re Mooney Aircraft, Inc.*, 730 F.2d 367 (5th Cir. 1984).

asbestos, even though their injury was not manifest until years later); *In re Eagle-Picher Indus., Inc.*, 144 B.R. 69, 71-72 (Bankr. S.D. Ohio 1992) (court defined class of future personal injury claimants in Chapter 11 case as including persons exposed to asbestos or asbestos products who as of filing date of cases did not yet have a cause of action against debtors on account of such exposure, but who will have such a right subsequently).

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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September 26, 1994

APPENDIX I

1. Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof, Disclosure Statement Dated March 14, 1989, Plan of Reorganization Dated March 14, 1989, and Related Documents in *In re UNR Industries, Inc.*, Nos. 82 B 9841-9845, 82 B 9847, 82 B 9849 and 82 B 9851 (Bankr. N.D. Ill.).

2. Affidavit of David E. Maxam, filed on November 15, 1993, in Supplemental Statement Regarding Mootness submitted by Appellees, the Trustees of the UNR Asbestos-Disease Claims Trust in *In re UNR Industries, Inc.*, Nos. 93-1510 and 93-2268 (7th Cir.).

3. Supplemental Affidavit of Henry Gray, filed on October 5, 1993, as Exhibit B to Brief of Debtors-Appellees UNR Industries, Inc. in *In re UNR Industries, Inc.*, Nos. 93-1510 and 93-2268 (7th Cir.).

4. Affidavit of David E. Maxam, filed on October 5, 1993, as Exhibit C to Brief of Debtors-Appellees UNR Industries, Inc. in *In re UNR Industries, Inc.*, Nos. 93-1510 and 93-2268 (7th Cir.).